

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

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| BRADLEY J. SCHAUFENBUEL; et al., |) |
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| Plaintiffs, |) |
| |) |
| |) |
| |) |
| INVESTFORCLOSURES FINANCIAL, L.L.C.; et al., |) |
| |) |
| |) |
| |) |
| Defendants. |) |
| |) |

Case No. 09-CV-1221

Judge Leinenweber

Magistrate Judge Nolan

MOTION TO STRIKE

NOW COME Plaintiffs, by and through their attorneys Thurston Law Offices, P.C. and Law Offices of Joel M Weiner, LLC, and pursuant to Rule 12(f) of the Federal Rules of Civil Procedure respectfully moves this honorable Court to strike certain portions of the Reply in Support of Motion to Dismiss filed by Defendants Darcey Martin ("Martin"), Deana Guidi ("Guidi") and Tom Rodriguez ("Rodriguez") in this matter. In support of their Motion, Plaintiffs hereby state and allege as follows:

1. Defendants Martin, Guidi and Rodriguez have filed a Rule 12(b)(6) Motion to Dismiss Plaintiffs' Second Amended Complaint in this matter. (Document #87.)

2. Plaintiffs timely filed their response (Document #107) and Defendants filed their Reply on August 5, 2009. (Document #125).

3. In their Reply, Defendants inserted the following in their "Conclusion" paragraph:

Without any knowledge of any specific wrongdoing by Ms. Martin, Ms. Guidi, or Mr. Rodriguez, Plaintiffs' counsel has named them in this action to conduct a fishing expedition against them and further overwhelm and pressure a settlement payment. Indeed, Plaintiffs' counsel has even stated that rather than asserting a defense in this

lawsuit, Ms. Martin "should have come to [him] to discuss letting her out of the case." Upon information and belief, Plaintiffs' plan has already succeeded in procuring settlement from at least (1) of the individual Defendants, Scott Wessel.

(Document #125, p. 9; emphasis added.)

4. Rule 12(f) provides in pertinent part: "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f).

5. To suggest that Plaintiffs or Plaintiffs' counsel have filed this suit against the named Defendants solely with a motive to coerce a settlement of a baseless claim is scandalous beyond measure.

6. Further, Defendants offer no citation to the purported statement by undersigned counsel. The reason for that is simple. The alleged statement was never made by undersigned counsel – in pleadings, in conversations with counsel or parties or witnesses, or otherwise.

7. As Defendants' counsel should be well aware, settlement discussions, offers of compromise and actual compromise are not admissible for the purposes for which Defendants submit in their Reply. See Fed.R.Evid. 408; *Zurich American Ins. Co. v. Watts Industries, Inc.*, 417 F.3d 682, 688-89 (7th Cir. 2005) ("Evidence of conduct or statements made in compromise negotiations is likewise not admissible.")

8. The only purpose for which Defendants inserted this scandalous material in their brief is to attempt to unfairly prejudice this Court in Defendants' favor on their Motion to Dismiss. While Plaintiffs know that this Court is not easily swayed by such misbehavior, it is not appropriate that such reprehensible and unsupported accusations remain on the record of this Court.

WHEREFORE, Plaintiffs respectfully request that this honorable Court strike the entire quoted paragraph above from Defendants' Reply in Support of Motion to Dismiss, grant Plaintiffs their attorney's fees in being forced to bring this motion, and for other and further relief as this Court deems just and equitable.

Respectfully submitted,
PLAINTIFFS

By: /s/ Robert C. Thurston
One of Their Attorneys

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